IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 931 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF HIRALAL J MODI

Versus

INDIAN RAODWAYS CORPORATION

Appearance:

1. Civil Revision Application No. 931 of 1990

MR MB GANDHI for Petitioner No. 1

..... for Petitioner No. 1/1-1/5

MR VM JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/07/2004

ORAL JUDGEMENT

This revision application is filed by landlord

Hiralal J. Modi (since died through legal representatives) - ori. plaintiff of HRP Suit No. 695/1978 against the judgment and order passed by the appellate bench of Small Causes Court, at Ahmedabad in Civil Appeal No. 115/1982 on 28.12.1989 by which Civil Appeal came to be allowed and the judgment and decree of the trial court came to be set aside. The standard rent of the suit premises was fixed at Rs. 135/- per month inclusive of municipal tax and education cess.

The plaintiff - present petitioner filed HRP Suit No. 695/1978 in the Court of Small Causes Court against the present respondent for eviction and arrears of rent under the Rent Act for the suit premises i.e. Bungalow no. 13 in Ratna Park Co-operative Housing Society, Shahibaug, at Ahmedabad. According to the plaintiff, the suit bungalow was leased to defendant for monthly rent of Rs. 135/- and the tenant was in arrears of rent right from 1.3.1976. It was also contended that ori. defendant no. 1 had sublet one room of that bungalow to defendant no. 2 and the other room to one Ramdev. The suit bungalow was rented only for the Manager of the defendant instead of that the defendant used to keep their servants and staff members in the bungalow without the consent of the plaintiff. A notice was served to the defendants which is of dated 22.12.1977 but the defendants failed to pay the arrears of rent and failed to state correct occupancy in the suit premises. Plaintiff stated in the suit that the bungalow was required by him for his personal bonafide requirement. The suit was contested hotly and it was stated in the written statement by the defendant no. 1 that the suit premises was kept on rent for the residence of the staff of the members of defendant no. 1 - company and the payment of rent was never refused by defendant no. 1. Rent up to February, 1976 was paid to the landlord but the landlord had not paid any municipal tax and education cess. Therefore, the defendant no. 1 had to pay the same amount on behalf of the plaintiff - landlord towards the municipal tax. The remaining amount of rent after adjusting above said amount of tax paid by defendant no. 1, was tendered to landlord but plaintiff refused to accept the same. Even after notice defendant no. 1 tendered rent but the same was not accepted. The legality and validity of notice dated 22.12.1977 was also contested. The suit was contested on the ground of subletting and also on the ground of bonafide requirement of the landlord. Ld. trial judge vide his judgment dated 28.1.1982 after recording of the evidence came to the conclusion that the tenant present petitioner was found tenant in arrears of rent as alleged by the

plaintiff. It was also found that the defendant was ready and willing to pay the rent. The standard rent of the suit premises was fixed at Rs. 135/per month including municipal tax and education cess because that was the issue and dispute between the parties. While, issue as to the bonafide requirement was not decide in view of the above finding of the trial court and trial court also came to the conclusion that subletting was not proved. The trial court, therefore, passed decree for eviction in favour of the plaintiff present petitioner and directed defendant no. 1 to hand over vacant possession of the suit premises to the landlord.

Being aggrieved, defendant no. 1 preferred above Civil Appeal No. 115/1982 before the Appellate Bench of the Small Causes Court, at Ahmedabad and after hearing both the sides at length, the Appellate Bench came to the conclusion that trial court erred in passing decree against the defendant - tenant under sec. 12 of the Rent Act holding the defendant, a tenant in arrears. The appellate bench also came to the conclusion that the plaintiff failed to prove bonafide requirement of the suit premises as well as subletting. Ld. appellate bench fixed the standard rent at Rs. 135/- per month

Ld. advocate Mr MB Gandhi for the petitioner was heard at length in this revision application, while ld. advocate for the opponent is not present.

On going through the reasonings of both the courts below, it clearly appears that so far as the decree passed by the trial court under sec. 12 of the Bombay Rent Act is concerned, the appellate bench came to the conclusion that the rent was due as demanded in the suit but admittedly, the tenant paid municipal tax on behalf of the landlord and landlord was bound to give credit to this amount. Vide evidence ex. 46 Sajjankumar, a witness of the tenant-defendant could prove that bills were sent to the landlord - plaintiff about the municipal tax, but landlord failed to pay the same. It was also proved by this evidence that plaintiff used to collect the rent and after deducting the amount of tax, balance amount was offered to the landlord but plaintiff-landlord did not accept the same. After considering the evidence on record on behalf of the plaintiff-landlord, ld. appellate bench came to the conclusion that the evidence of witness of defendant no. 1 ex. 46 who looked after affairs of defendant no. 1 company about the payment paid to the municipal tax, should be believed. It is found that, therefore, the

defendant was ready and willing to pay the rent then due. The defendant no. 1 deposited Rs. 10,540/- against dues of rent of Rs. 9450/-. Since the defendant no. 1 had paid all the dues in the court and since this was the case falling under sec. 12(3)(b) of the Rent Act, the tenant was protected and no decree could have been passed by the trial court for eviction on this ground. This conclusion of the appellate bench is based on evidence on record and correct facts and circumstances of the case and according to law, hence, requires no interference. So far as other ground of bonafide requirement of the landlord and subletting is concerned, the case of the landlord was rejected by the trial court as well as the appellate bench of the Small Causes Court. So far as ground of bonafide requirement is concerned, except the evidence of the plaintiff, there was no other evidence. The suit premises was constructed, according to the plaintiff, in the year 1970 and was let out to the defendant in 1972 and the suit came to be filed in the year 1978. If according to the size of the family of the plaintiff, he required more accommodation, then he would not have let out the bungalow which he constructed in the year 1970. The plaintiff also failed to prove that he was under pressure to evict the premises which he occupied at that time. So, thus the plaintiff - landlord failed to prove his bonafide requirement and both the courts below rightly held that when there was no bonafide requirement on the part of the plaintiff - present petitioner, the question of hardship would not survive.

So far as the ground of subletting is concerned, a witness ex. 44, cashier of defendant no. 1 stated that he was residing in the suit premises for about 5 years and defendant no. 1 did not charge any amount of rent from him. He proved that he was serving with the defendant no. 1. From the evidence of the plaintiff and the evidence of defendant no. 1, the only conclusion which can be drawn from the facts and circumstances of the case that the plaintiff was not able to prove that there was delivery of exclusive possession to third party by the tenant for consideration. The employee of defendant no. 1 who was staying in the bungalow was staying as employee of defendant no. 1 and defendant no. 1 company did not charge anything for this occupation from the employee, therefore, the plaintiff failed to prove the subletting on the part of defendant no. 1tenant and both the courts below rightly refused decree of eviction on this ground.

It is rightly further noted by the appellate bench of Small Causes Court that notice for eviction and

demanding arrears is condition precedent before processing eviction proceedings. In the notice which is at ex. 32 dated 22.12.1977, the amount of Rs. 2835/- was demanded by the landlord to be amount of rent due, then in this amount, the plaintiff did not give credit of Rs. 982-36ps. which defendant no. 1 - tenant paid towards municipal taxes. This being substantial amount and not reflected in notice as a credit to the arrears of rent, notice cannot be held legal and valid.

Nothing is shown to interfere in the above conclusions of both the courts below. Therefore, the order impugned of appellate bench of Small Causes Court which is of dated 28.12.1989 in Civil Misc. Appeal No. 115/1982 dismissing the suit of the landlord in toto, requires no interference.

In view of the above, this civil revision application stands dismissed. Rule is discharged. No order as to costs.

(J.R. VORA, J.)
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